

FACTSHEET

CONTESTS FOR CAUSE / ELECTION OBJECTIONS 2004 ELECTIONS

This fact sheet is for informational purposes only. Refer to Sections 11-171 to 11-175 of the Hawaii Revised Statutes and other sources of the law for information dealing with election contests for cause.

CONTESTS FOR CAUSE

Hawaii Revised Statutes (HRS), states that with respect to any election, any candidate, or qualified political party, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system.

DEADLINE TO FILE CONTEST FOR CAUSE / COMPLAINT

The complaint must be filed in the office of the clerk of the supreme court and must be accompanied by a deposit for costs of court as established by rules of the supreme court. Complaints must be filed by 4:30 p.m. as follows:

<u>Election</u>	<u>Time</u>	<u>Deadline</u>
Primary Election	6 days after election.....	Sept. 24, 2004
Special Elections held w/ Primary.....	6 days after election.....	Sept. 24, 2004
General Election	20 days after election.....	Nov. 22, 2004
Special Elections held w/ General	20 days after election.....	Nov. 22, 2004
OHA Special Election	20 days after election.....	Nov. 22, 2004

PRIMARY OR SPECIAL PRIMARY ELECTIONS

(a) Supreme Court Receipt of Complaint

Upon receipt of a complaint, the clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the fifth day after service thereof.

(b) Supreme Court Hearing of the Complaint

The court shall hear the contest in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall not later than 4:30 p.m. on the fourth day after the return give judgment fully stating all findings of fact and of law.

(c) Supreme Court Judgment

The judgment shall decide what candidate was nominated or elected, as the case may be, in the manner presented by the petition, and a certified copy of the judgment shall forthwith be served on the chief election officer or the county clerk, as the case may be, who shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general or special general election. The judgment shall be conclusive of the right of the candidate so declared to be nominated; provided that this subsection shall not operate to amend or repeal section 12-41.

GENERAL, SPECIAL GENERAL, OR SPECIAL ELECTIONS

(a) Supreme Court Receipt of Complaint

Upon receipt of a complaint, the clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the tenth day after service thereof.

(b) Supreme Court Hearing of Complaint

The complaint shall be heard by the supreme court in which the complaint was filed as soon as it reasonably may be heard. On the return day, the court, upon its motion or otherwise, may direct summons to be issued to any person who may be interested in the result of the proceedings. At the hearing, the court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and of law.

(c) Supreme Court Judgment

The court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and of law. The judgment may:

1. Invalidate the general, special general, or special election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the precinct officials.

If the judgment should be that the general, special general, or special election was invalid, a certified copy thereof shall be filed with the governor, and the governor shall duly call a new election to be held not later than one hundred twenty days after the judgment is filed.

2. Decide that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected.

If the court shall decide which candidate or candidates have been elected, a copy of that judgment shall be served on the chief election officer or county clerk, who shall sign and deliver to the candidate or candidates certificates of election, and the same shall be conclusive of the right of the candidate or candidates to the offices.

Extracted from the 1993 Election Laws of Hawaii Handbook with 1998 Supplement.

§11-1 Definitions. Whenever used in this title, the words and phrases in this title shall, unless the same is inconsistent with the context, be construed as follows:

"Ballot," a ballot including an absentee ballot is a written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on. A ballot may consist of one or more cards or pieces of paper, or one face of a card or piece of paper, or a portion of the face of a card or piece of paper, depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use. It shall also include the face of the mechanical voting machine when arranged with cardboard or other material within the ballot frames, containing the names of the candidates and questions to be voted on.

"Chief election officer," *[Repeal and reenactment on June 30, 1999. L Sp 1995, c 27, §15]* the individual appointed by the elections appointment panel pursuant to section 11-1.6 to supervise state elections.

"Clerk," the county clerks of the respective counties.

"County," the counties of Hawaii, Maui, Kauai, and the city and county of Honolulu, as the context may require. For the purposes of this title, the county of Kalawao shall be deemed to be included in the county of Maui.

"Election," all elections, primary, special primary, general, special general, special, or county, unless otherwise specifically stated.

"Election officials," precinct officials and other persons designated as officials by the chief election officer.

"Hawaiian," any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

"Office," an elective public office.

"Political party" or "party," a political party qualified under part V of this chapter.

"Precinct," the smallest political subdivision established by law.

"Primary," a preliminary election in which the voters nominate candidates for office as provided for in chapter 12.

"Runoff election" means any single election required by county charters preceded by an election that failed to elect a candidate.

"Service bureau" means a firm registered to do business in the State and whose principal business is furnishing data processing services.

"Special election," any single election required by law when not preceded by an election to nominate those candidates whose names appear on the special election ballot.

"Special primary election" and "special general election," elections held only (a) whenever any vacancy occurs in the offices of United States senator, United States representative, state senator, or state representative because of failure to elect a person at an uncontested general election or (b) as specified in county charters.

"Voter," any person duly registered to vote.

"Voter turnout," means the total number of voters at an election as determined by the number of ballot cards tabulated by the computer or of paper ballots counted by the precinct officials. When there is more than one ballot card issued to each voter, "voter turnout" means the total count of the alpha ballot card with the highest number of cards tabulated by the computer. Ballots that are blank or ballots that are rejected for any reason shall be included in the count of the total number of voters.

"Voting system," the use of paper ballots, electronic ballot cards, voting machines, or any system by which votes are cast and counted. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(a); am L 1979, c 196, §3; am L 1980, c 264, §1(a); am L 1987, c 232, §1; am L 1990, c 156, §4; am L Sp 1995, c 27, §3; am L 1996, c 239, §1; am L 1998, c 22, §1]

§11-171 Applicability of this part. This part shall apply whenever a contested election is subject to determination by a court of competent jurisdiction in the manner provided by law. [L 1970, c 26, pt of §2]

§11-172 Contests for cause; generally. With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election

results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system. A copy of the complaint shall be delivered to the chief election officer or the clerk in the case of county elections. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(xx); am L 1975, c 36, §1(15); am L 1991, c 9, §2]

§11-173.5 Contests for cause in primary, special primary elections, and county elections held concurrently with a regularly scheduled primary or special primary election.

- (a) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the sixth day after a primary or special primary election, or county election contests held concurrently with a regularly scheduled primary or special primary election, and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the fifth day after service thereof.
- (b) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the court shall hear the contest in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall not later than 4:30 p.m. on the fourth day after the return give judgment fully stating all findings of fact and of law. The judgment shall decide what candidate was nominated or elected, as the case may be, in the manner presented by the petition, and a certified copy of the judgment shall forthwith be served on the chief election officer or the county clerk, as the case may be, who shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general, special general, or runoff election. The judgment shall be conclusive of the right of the candidate so declared to be nominated; provided that this subsection shall not operate to amend or repeal section 12-41. [L 1973, c 217, §1(aaa); am L 1974, c 34, §1(c); am L 1979, c 133, §5; am L 1998, c 22, §2]

§11-174.5 Contests for cause in general, special general, special, and runoff elections.

- (a) In general, special general, special, or runoff elections, the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the twentieth day following the general, special general, special, or runoff election and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the tenth day after service thereof.
- (b) In cases involving general, special general, special, or runoff elections the complaint shall be heard by the supreme court in which the complaint was filed as soon as it reasonably may be heard. On the return day, the court, upon its motion or otherwise, may direct summons to be issued to any person who may be interested in the result of the proceedings.

At the hearing, the court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and of law. The judgment may invalidate the general, special general, special, or runoff election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the precinct officials; or decide that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected. If the judgment should be that the general, special general, special, or runoff election was invalid, a certified copy thereof shall be filed with the governor, and the governor shall duly call a new election to be held not later than one hundred twenty days after the judgment is filed. If the court shall decide which candidate or candidates have been elected, a copy of that judgment shall be served on the chief election officer or county clerk, who shall sign and deliver to the candidate or candidates certificates of election, and the same shall be conclusive of the right of the candidate or candidates to the offices. [L 1973, c 217, §1(bbb); am L 1979, c 133, §6; am imp L 1984, c 90, §1; am L 1998, c 22, §3 and c 123, § 1]

§11-175 Powers of supreme court; costs. The supreme court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein. The court may make such special rules as it may find necessary or proper. The costs shall be as provided by the supreme court by rule. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ccc); am L 1993, c 6, §3]

§12-41 Result of election.

- (1) The person or persons receiving the greatest number of votes at the primary or special primary as a candidate of a party for an office shall be the candidate of the party at the following general or special general election but not more candidates for a party than there are offices to be elected; provided that any candidate for any county office who is the sole candidate for that office at the primary or special primary election, or who would not be opposed in the general or special general election by any candidate running on any other ticket, nonpartisan or otherwise, and who is nominated at the primary or special primary election shall, after the primary or special primary election, be declared to be duly and legally elected to the office for which the person was a candidate regardless of the number of votes received by that candidate.

- (b) Any nonpartisan candidate receiving at least ten per cent of the total votes cast for the office for which the person is a candidate at the primary or special primary, or a vote equal to the lowest vote received by the partisan candidate who was nominated in the primary or special primary, shall also be a candidate

at the following election; provided that when more nonpartisan candidates qualify for nomination than there are offices to be voted for at the general or special general election, there shall be certified as candidates for the following election those receiving the highest number of votes, but not more candidates than are to be elected. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(j); am L 1979, c 139, §10; am L 1983, c 34, §21]

This Fact Sheet is intended for informational purposes only and should not be used as an authority on the Hawaii election law and candidate deadlines. Requirements and/or deadlines may change pending changes in legislation. Consult the Hawaii Revised Statutes and other sources for more detailed and accurate requirements.

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